

In the Supreme Court of the State of Alaska

Marianne E Burke,
Appellant,

v.

**Criterion General, Inc. and Alaska
USA FCU,**
Appellees.

Supreme Court No. **S-17766**

Order

Date of Order: **May 6, 2020**

Trial Court Case No. **3AN-18-09109CI**

On consideration of the appellant's April 23, 2020 motion for recusal of Justice Maassen, Alaska USA's May 1, 2020 opposition and, Criterion General, Inc.'s May 1, 2020 joinder in Alaska USA's opposition,

It is hereby **ORDERED**:

Appellant Marianne Burke, on behalf of the Estate of Abigail Caudle, has moved that I be recused from participating in this appeal, which involves claims against Criterion General, Inc., and Alaska USA Federal Credit Union. In a letter dated April 15, 2020, Deputy Clerk Mindi Johnson informed the parties that I had "been a member of Alaska USA Federal Credit Union for approximately 39 years" and that my "family has checking and savings accounts with the institution and has had several auto loans in the past from it." The letter also informed the parties that I am "not acquainted with anyone in the institution's management" and that I do not believe my credit union membership "will affect [my] ability to be fair and impartial in this case." The letter invited parties who wished to challenge my participation to file an objection by May 1, providing "a specific explanation of why an actual conflict necessitating recusal is

present.”

The basis for Ms. Burke’s motion, as I understand it, is not an actual conflict but primarily the appearance of one. She contends that the length of time my family has banked with Alaska USA implies that we “have a trusting, good relationship” which I will want to continue for the sake of possible future loans and other possible financial benefit, calling into question my ability to give “an unbiased outlook” to Ms. Burke’s side of the case.

My relationship with Alaska USA, though long-standing, has been entirely distant and impersonal. As noted in Ms. Johnson’s letter, I do not know anyone in the credit union’s management; in fact, I do not know any employee by name or on sight. I have probably set foot in the physical premises no more than five times in the past dozen years, and then only to interact briefly with the first available teller. The possibility that my decision in this case will have repercussions on my banking relationship is so remote that it will not factor even slightly in my deliberations.

Ms. Burke’s motion relies on 28 U.S.C. § 455(a), a federal statute applying to federal court judges, for the proposition that I should disqualify myself because my “impartiality might reasonably be questioned.” Although the statute does not apply to state-court judges, I note that its definition of a disqualifying “financial interest” does not cover ordinary consumer bank accounts, “[n]or does holding such an account create a basis for a reasonable, knowledgeable observer to question the assigned judge’s

impartiality.”¹ I note also our own court’s admonition that “a judge has as great an obligation not to disqualify himself [or herself], when there is no occasion to do so, as he [or she] has to do so in the presence of valid reasons.”²

Finding no valid reason to disqualify myself, I deny Ms. Burke’s motion for my recusal from her appeal. I hereby refer my decision to the full court for review pursuant to AS 22.20.020(c).

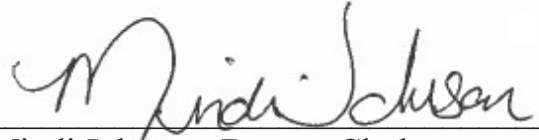
Entered at the direction of an individual justice.

¹ *Rader v. ING Bank, fsb*, 2011 WL 4571780, at *7 (D. Del. 2011) (“Holding a deposit account with a bank does not constitute a disqualifying financial interest.”), *aff’d sub nom. Rader v. ING Groep NV*, 497 Fed.Appx. 171, 175 (3rd Cir. 2012) (rejecting argument that judge’s “online savings account with an institution that is a party” constituted a disqualifying “financial interest” “as that phrase is defined in § 455(d)(4)”); *see also Zow v. Regions Financial Corp.*, 2014 WL 12616988 at *1 (S.D. Ga. 2014) (“Courts have agreed that CD ownership does not render a judge partial in ordinary proceedings.”).

² *DeNardo v. Maassen*, 200 P.3d 305, 310-11 (Alaska 2009) (quoting *Amidon v. State*, 604 P.2d 575, 577 (Alaska 1979); Alaska Code Jud. Conduct Canon 3B(1) (“A judge shall consider and decide all matters assigned to the judge except those in which the judge’s disqualification is required.”)).

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